Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile-Satellite Service	)	CC Docket 92-76

COMMENTS OF dbX CORPORATION

dbX Corporation ("dbX"), by its attorneys, hereby submits its comments on the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding.[1] In the Notice, the Commission outlined proposed rules for licensing service providers in the Non-Voice, Non-Geostationary Mobile Satellite Service ("NVNG MSS"). By these comments, dbX endorses the Commission's efforts to speed the implementation of this service and offers specific recommendations for modifying the Commission's proposed rules to better promote competition and multiple entry in the NVNG MSS.

BACKGROUND

dbX management has been actively pursuing opportunities in newly emerging areas of mobile communications in the United States for well over two decades. dbX is wholly-owned and controlled by David A. Bayer, an individual

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1 Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile-Satellite Service, CC Docket 92-76, (FCC 93-28) Notice of Proposed Rulemaking (released February 10, 1993) ("Notice").

whose commitment and longstanding involvement in the mobile communications industry is well known to the Commission. Mr. Bayer began his career in mobile communications in the early 1970's as owner and operator of paging and conventional mobile telephone systems in Missouri and Illinois. Mr. Bayer's involvement in the cellular industry began in the early 1980's at the initial stages of the industry development. As a principal owner and manager of the St. Louis MSA system, Mr. Bayer was responsible for the design, construction and operation of this major-market cellular property. In the interval, the CyberTel group of

From 1988 until November 1991, Mr. Bayer served as a Director of the Cellular Telecommunications Industry Association.

This background has led Mr. Bayer and dbX to conclude that there is likely to be robust demand for new mobile communications services, such as the NVNG MSS. dbX has not filed an application to operate a NVNG MSS system nor did it participate in the Commission's Negotiated Rulemaking for the NVNG MSS. Nevertheless, it has remained keenly interested in the introduction of low earth orbit satellite services and anticipates that it will be actively involved in the NVNG MSS as a purchaser of channels, a reseller or in some other capacity to be determined in the future. Given this expectation, dbX actively supports Commission efforts to promote the introduction of the NVNG MSS.

DISCUSSION

The basic objectives of the FCC's satellite policies are the promotion of competition and multiple entry. These objectives are derived from the mandate in Section 1 of the Communications Act to regulate "interstate. . .commerce in connection by wire and radio so as to make available, so far as possible to all people of the United States a rapid, efficient, nationwide. . .wire and radio communications service with adequate facilities at reasonable costs. . . ." 47 U.S.C. § 151. In developing a regulatory framework for awarding licenses in the domestic fixed-satellite service, the FCC sought to meet the Section 1 mandate through the following objectives:

(a) maximize the opportunities for the early acquisition of technical, operational, and marketing data and experience in the use of this technology as a new communications resource for all types of services;

(b) afford a reasonable opportunity for multiple entities to demonstrate how any operational and economic characteristics peculiar to the satellite technology can be used to provide existing and new specialized services more economically and efficiently than can be done by terrestrial facilities;

(c) facilitate the efficient development of this new resource by removing or neutralizing existing institutional restraints or inhibitions; and

(d) retain flexibility in policy making with respect to the use of satellite technology for domestic communications so as to make such adjustments therein as future experience and circumstances may dictate.[2]

In each new satellite service, including the Broadcast Satellite Service ("BSS"), Radio Determination Satellite Service ("RDSS"), the Mobile Satellite Service ("MSS"), and the international Fixed-Satellite Service, as implemented by the Commission's separate systems policy, the FCC has reaffirmed and embraced these objectives. In all of these services, except for MSS, the FCC was able to stimulate competition and multiple entry by assigning separate orbit positions and through interference sharing. In its order adopting rules for the RDSS the Commission clearly indicated that multiple entry and competition were its principal policy goals when it stated that "while technical efficiency is a desirable goal . . .

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[2] See Domestic Communications Satellite Facilities, 84 FCC 2d 584 (1981)

the benefits of competition, including continued innovation, will be best provided by independently licensed multiple systems."[3]

dbX believes that these principles must be the cornerstones of the Commission's final policies for the NVNG MSS. Multiple entry and competition will foster technological innovation and ensure that prices are reasonably related to costs. This was recognized in the Work Plan of the Below 1 GHz Negotiated Rulemaking Committee which stated that rules should be recommended that "promote multiple entry."

A review of the record in this proceeding, however, does not provide any clear indication of how competition is to be fostered or future entrants or international systems are to be accommodated. Based on the results of the Negotiated Rulemaking, the Commission seems to be moving down a path that provides the pending applicants with access to almost all the currently available spectrum (regardless of need) to implement systems of disparate technical designs.[4] This can only result in the implemention and perpetuation of a duopoly in the provision of NVNG MSS services. Such a situation is antithetical to the Commission's pro-competitive satellite policies and cannot be supported by the record in this proceeding.

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3 Second Report and Order in Gen Docket No. 84-690, 104 FCC 2d 650 (1986).

4 For instance, a review of the spectrum sharing proposals from the Negotiated Rulemaking does not indicate how additional or international systems can be accommodated in the 137-138 MHz band.

As the Commission finalizes its rules, dbX urges the Commission to recognize the unique circumstances presented by the NVNG MSS so that it may develop rules that will avoid the situation described above. In particular, there is very limited frequency currently available for NVNG MSS.[5] This creates an incentive for licensees to warehouse spectrum. Warehousing is certainly contrary to all Commission policies and clearly does not serve the public interest. It discourages multiple entry, decreases incentives for technological innovation and likely will result in increased costs to the consumer. Additionally, because the NVNG MSS systems will be placed into low earth orbit and transceivers will require omni-directional antennas, the Commission does not have the flexibility in issuing licenses that has been available for other satellite services. Flexibility is further diminished because the NVNG MSS applications currently before the Commission propose to use incompatible technologies which make interference sharing between all parties impractical.

Given this situation, dbX believes that it is imperative that the Commission adopt policies which will foster competition and multiple entry and discourage warehousing. The following policy proposals are offered to deal with this concern. First, each NVNG MSS licensee should be assigned the minimum

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[5] This is a very different situation than that presented by other satellite services where large frequency allocations, multiple orbit positions or progressively reduced orbit spacing have facilitated expansion of capacity.

amount of frequency necessary to ensure sufficient channels are available to develop an economically viable system during the first five years of operations. The process outlined in the NPRM is likely to result in a "land rush" where each party takes as much of the resource as can be staked out regardless of whether it can be used. Assignments must be based on real near term requirements. Second, dbX believes that an NVNG MSS licensee should not be eligible for assignment of additional spectrum until sufficient traffic fill has been demonstrated on the licensee's system. dbX believes that a NVNG MSS licensee must demonstrate that 70% of its available capacity has been filled during two consecutive utilization reporting periods before it can become eligible to obtain additional spectrum.[6] This rule will ensure that new entrants are provided a meaningful opportunity to use any newly available spectrum.

Third, dbX concurs with the proposed Section 25.142(c)(3) rule on semi-annual reporting of utilization. However, it would urge the Commission to slightly modify this rule to ensure that relevant information is received by the Commission in a timely manner. In particular, NVNG MSS licensees should be required to submit reports on a date certain (e.g. January 1 and July 1 of each year). This will provide uniform reporting dates and enable better comparisons of system implementation progress. Additionally, the licensees should be required to

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[6] This includes the frequencies in the currently allocated bands that will not be available until later this decade as well as any other spectrum that may be allocated to this service.

specify for the entire system the number of kilobits per second ("Kbs") actually delivered on a daily basis and the total number of Kbs that could be potentially delivered on a daily basis for each day during the reporting period. This information will provide a meaningful method for the Commission to determine actual utilization. If it is left to the licensees' discretion to specify use, the information may be misleading. For instance, a licensee may indicate that all channels are being used even though a very small amount of data is actually being transmitted over the channels.

Fourth, each NVNG MSS license should contain a condition that puts the licensee under an affirmative obligation to negotiate in good faith a coordination agreement with new licensees. This obligation should also be incorporated into Section 25.142(b)(3) of the Rules. Under the current proposals, this obligation is only cited as a general Commission policy. Without such a requirement, an existing licensee will have no direct obligation to coordinate with new licensees. This legal responsibility is especially important for this service where the Commission proposes to provide licensees with significant technical and operational flexibility and there is limited spectrum available. It must be recognized that system operators will have an incentive to inhibit competition and that, given the opportunity, will use the coordination process to further competitive goals.

It is difficult to see how this requirement could be objectionable since coordination will not commence until after all parties have had an opportunity to comment on a proposed application and a system license has been issued by the

Commission. Presumably, the Commission will have made a finding that the new entrant can be accommodated when it issues the system authorization and therefore will have an interest in seeing the successful conclusion of coordination agreements.

Collectively, the above proposals will in no way impair the ability of any licensee to implement and operate an NVNG MSS system. These proposals are designed solely to promote multiple entry, technical innovation, competition and at the same time discourage warehousing of spectrum. These are all policy goals that have been deemed by the Commission on numerous occasions to serve the public interest and should be adopted for the NVNG MSS.

CONCLUSION

dbX believes that the Commission has proposed a basic structure for the Non-Voice, Non-Geostationary Mobile-Satellite Service that will allow the public

to benefit from this new technology. It urges the Commission, however, to implement the proposals described above in order to ensure that the public obtains the benefits associated with promoting competition and multiple entry from this new service.

Respectfully submitted,

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April 26, 1993

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